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**DEC 20 2000**

December 20, 2000

**FEDERAL COMMUNICATIONS COMMISSION**  
OF

**BY HAND DELIVERY**

**Ms. Magalie Roman Salas**

**Secretary**

**Federal Communications Commission**

**445 12<sup>th</sup> Street, S.W.**

**Room TW-A325**

**Washington, D.C. 20554**

**RE: Comments on Petition for Declaratory Ruling**  
**WT-00-239**

**Dear Ms. Salas:**

Enclosed please find an original and four copies of the Comments of The Kansas Corporation Commission on the Petition For Declaratory Ruling That Western Wireless' Basic Universal Service In Kansas Is Subject To Regulation As Local Exchange Service.

If you have any questions, please contact me or my assistant, Lorraine Mossburg.

Sincerely,

**BIRCH, HORTON, BITTNER  
AND CHEROT**

*Elisabeth H. Ross*

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**Counsel for The Kansas Corporation Commission**

**Enclosures**

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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION**

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**DEC 20 2000**

In the Matter of Petition of the State Independent )  
Alliance and the Independent Telecommunications ) WT-00-239  
Group for a Declaratory Ruling That the Basic )  
Universal Service Offering Provided by Western ) Wireless Telecommunications Bureau  
Wireless in Kansas is Subject to Regulation as ) Commercial Wireless Division  
Local Exchange Service. ) Policy and Rules Branch

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

**COMMENTS OF THE KANSAS  
CORPORATION COMMISSION**

The State Independent Alliance and the Independent Telecommunications Group ("Petitioners") filed a Petition for Declaratory Ruling on November 3, 2000 ("Petition"). The State Corporation Commission of the State of Kansas ("KCC") provides the following comments on the Petition.

The KCC supports clarification from the FCC on whether the Basic Universal Service ("BUS") offering provided by WWC Holding Company, Inc. d/b/a CellularONE ("Western Wireless") is a Commercial Mobile Radio Service ("CMRS") under federal law and whether the BUS offering qualifies for any of the exemptions of 47 U.S.C. § 332(c). In Order No. 6 in Docket No. 99-GCCZ-156-ETC, the KCC determined that the 47 U.S.C. § 332(c)(3) and (8) exemptions appeared to apply to the BUS offering based on the evidence of record submitted in that proceeding.<sup>1</sup> The KCC has also acknowledged, however, that it is not clear at this time whether the BUS offering is a fixed or mobile wireless service, nor whether a determination that

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<sup>1</sup> Order No. 6, Docket No. 99-GCCZ-156-ETC (January 19, 2000), at ¶¶ 11, 30.

the BUS offering is fixed will resolve the applicability of 47 U.S.C. § 332(c).<sup>2</sup> Therefore, FCC resolution of this issue under federal law will assist the KCC in making decisions in its own state proceedings.

In fact, the KCC asks that the FCC decide this issue expeditiously. The KCC is in the midst of a proceeding to determine whether Western Wireless should be designated an ETC in the service territory of certain Kansas rural telephone companies. Therefore, it would be helpful to have an FCC decision on the applicability of 47 U.S.C. § 332(c) to Western Wireless' BUS offering as soon as possible. If the FCC does not issue its decision expeditiously, the KCC proceeding will be hampered by uncertainty.

Several points in the Petition require clarification for the FCC's record. First, the Petition implies that all providers of local exchange service in Kansas (including competitive carriers) are required under K.S.A. 66-2011 (b) and (c) to offer dial-up Internet access at a minimum data transmission speed of 19.2 kbps.<sup>3</sup> K.S.A. 1999 Supp. 66-2011(c) requires that "all local exchange carriers, other than rural telephone companies" file two flat-rate dial-up plans for Internet access in locations without local access to an Internet Service Provider. Similarly, subsection (b) requires rural telephone companies to file tariffs concurring in those rates.

The Petitioners' implication is not correct because the Kansas definition of the term "local exchange carrier" is more limited. Under K.S.A. 1999 Supp. 66-1,187(h), the Kansas statutes define the term "local exchange carrier" as carriers approved to provide local service as of

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<sup>2</sup> Order No. 9, Docket No. 99-GCCZ-156-ETC (April 17, 2000), at ¶ 8.

<sup>3</sup> Petition, at 16, fn. 43.

January 1, 1996.<sup>4</sup> Although the KCC deems it very important that all Kansans have access to Internet Service Providers, the statutory requirement to provide dial-up Internet access at 19.8 kbps is applicable only to incumbent local exchange carriers. The KCC did not certificate any competitive local exchange carriers to serve in Kansas before January 1, 1996. This is merely one instance in which the State Legislature imposed different requirements on incumbent local exchange carriers and new entrants.

Second, the Petition also decries the inability of BUS customers to have their telephone numbers listed in the white pages.<sup>5</sup> It is the KCC's understanding that Western Wireless intends to work with the respective local exchange carriers for publication of BUS customer numbers in their white pages. Moreover, the KCC has the authority under state law to require wireless ETCs to give their BUS customers' telephone numbers to local exchange carriers for publication in the local wireline white pages directory. Therefore this problem may not be as troublesome as the Petitioners portray.

Petitioners also ask the FCC to clarify that the wireless BUS offering is a substitute for wireline service and therefore subject to state rate and entry regulation.<sup>6</sup> To the extent the FCC

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<sup>4</sup> K.S.A. 1999 Supp. 66-1,187(h) states in pertinent part:

“local exchange carrier” means any telecommunications public utility or its successor providing switched telecommunications service within any local exchange service area, as approved by the Commission, on or before January 1, 1996.

<sup>5</sup> Petition at 15.

<sup>6</sup> In Order No. 6, Docket No. 99-GCCZ-156-ETC (January 19, 2000), at ¶ 11, the KCC determined, in part based on state law, K.S.A. 66-1,143 et seq., that it was precluded from regulating the entry and rates of wireless providers.

decides to interpret 47 U.S.C. § 332(c)(3), the KCC asks that the FCC specifically address what constitutes “a substantial portion of the communications within such state” under that subsection. Western Wireless’ BUS offering does not appear, at this time, to constitute “a substantial portion of the communications within the state” based on the Western Wireless application filed in Kansas.

In conclusion, the KCC agrees with Petitioners that it is appropriate for the FCC to determine, pursuant to federal law, whether Western Wireless’ BUS offering is a CMRS service and is subject to the exemptions from state regulation under 47 U.S.C. § 332(c)(3) and (8). The KCC will continue to interpret and implement applicable Kansas law in its state regulatory proceedings.

DATED this 20 day of December, 2000

KANSAS CORPORATION COMMISSION

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CERTIFICATE OF SERVICE

I, Elisabeth H. Ross, do hereby certify that on this 20<sup>th</sup> day of December, 2000, I caused a copy of the foregoing *Comments Of The Kansas Corporation Commission* to be served on the following persons:

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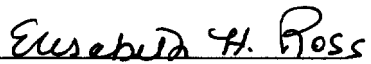
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